IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.3410 OF 2004

Dnyaneshwar Marutrao Bartakke
(since deceased through his L.Rs.)
1a) Dr. Girish D. Bartakke ... Petitioner

Vs.

Rajesh Chandrakant Thakar ... Respondent

Mr. Nitin Mhatre for the petitioner.

Mr. V.G. Mujumdar for the respondent.

**CORAM: SMT. RANJANA DESAI, J.**

**DATED: 29TH MARCH, 2005.**

**P.C.**:-

1. The petitioner is the son of the deceased original defendant. The respondent is the landlord. The respondent filed a suit for eviction on the ground of change of user, carrying out permanent alteration in the suit premises and on the ground of bonafide and reasonable requirement of the landlord. The trial court decreed the suit only on the ground of bonafide and reasonable requirement of the landlord. The lower appellate court confirmed the decree and, hence, the defendant has approached this court.

2. I have heard, at some length, Mr. Mhatre, the learned counsel appearing for the petitioner. He contended that the impugned judgment and decree is perverse and it suffers from patent illegalities. He submitted that not only that the appreciation of evidence

is perverse but the landlord has failed to join the mother and the brothers of the defendant to the suit. He submitted that the evidence clearly indicates that the original tenant was carrying on the business of Estate Agency in the suit premises. His wife i.e. mother of the defendant was doing milk business in the suit premises. However, the mother was not impleaded as a party defendant. He submitted that inasmuch as the mother and brothers have not been joined as party defendants, the impugned decree has become vulnerable and deserves to be set aside by this court.

3. In my opinion, there is no substance in this petition. The courts below have properly considered the evidence and returned concurrent finding on bonafide and reasonable requirement of the landlord. It is the case of the landlord that he is unemployed. He has no other source of income and he wants to start a courier service in the suit premises.

4. In his evidence, he has stated that he also wants to start bakery business. It is well settled that the landlord is the best judge for his requirement and his requirement need not be a dire necessity. In the facts and circumstances of the case, it cannot be said that the landlord has not made out his case of bonafide and reasonable requirement. The defendant's case is that the defendant is running a free dispensary. He has stated that he is running the dispensary on a charitable basis.

In fact, in his evidence, he has admitted that no hardship will be caused to him if the eviction decree is passed. At one stage, the defendant has stated that his mother is carrying on milk business in the suit premises and if the eviction decree is passed, hardship will be caused to her. However at other place, he has stated that his mother is carrying on milk business at Sonya Maruti Chowk. From this inconsistency, it is clear that the case that hardship is being caused to the mother is not true. In view of this, in my opinion, the trial court and the lower appellate court have rightly held that the landlord has proved his case on bonafide requirement and hardship. So far as the argument that the mother and brothers of the defendant have not been impleaded in the suit is concerned, that argument will have to be rejected. It is pertinent to note that the evidence shows that only the defendant was conducting dispensary at the suit premises at the time of death of his father. That is the specific case of the defendant. He has not stated that the brothers were doing any business in the suit premises. If at all, the mother and brothers had any interest in the suit premises, nothing prevented the defendant from leading evidence of the mother and brothers. In my opinion, this story is being put up merely to defeat the decree. In the circumstances, I do not find any substance in the petition. The writ petition is rejected.

(SMT. RANJANA DESAI, J.)